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OFFICE OF PETITIONS

In re Patent No. 7,084,260 : LETTER REGARDING
Lonberg et al. : PATENT TERM ADJUSTMENT
Issue Date: August 1, 2006 : and
Application No. 08/728,463 : NOTICE OF INTENT TO ISSUE
Filed: October 10, 1996 : CERTIFICATE OF CORRECTION
Atty Docket No. 14643-009020 :

This is in response to the "RESPONSE TO LETTER REGARDING OF PATENT TERM ADJUSTMENT" filed October 26, 2007. Patentees request reconsideration of the decision mailed September 20, 2007, correcting the patent term adjustment to four hundred eighty-seven (487) days by issuance of a certificate of correction. Patentees request correction of the patent term adjustment to five hundred fifty-one (551) days.

This request was properly filed by the prior attorney of record. A power of attorney and revocation of prior powers, including a change of correspondence address, was filed on January 8, 2008. Accordingly, this decision is being mailed to the new attorneys of record at the new correspondence address.

The request for correction of the determination of patent term adjustment (PTA) is GRANTED.

The patent term adjustment indicated in the patent is to be corrected by issuance of a second certificate of correction showing a revised Patent Term Adjustment of **FIVE HUNDRED FIFTY-ONE (551)** days.

On August 1, 2006, the application matured into U.S. Patent No. 7,084,260, with a revised patent term adjustment of 603 days. On October 2, 2006, patentees submitted a letter disclosing that

the patent term adjustment should be 551 days, not 603 days. By decision mailed September 20, 2007, the Office determined that the correct determination of patent term adjustment was 487 days. Patentees did not state a basis for their disclosure. The undersigned reviewed the record and determined that a period of reduction pursuant to 37 CFR 1.704(c)(7), a period of reduction of 52 days should have been entered, and pursuant to 37 CFR 1.704(c)(10), a period of reduction of 64 days should have been entered. Pursuant to the September 20, 2007 decision, the Office issued a Certificate of Correction correcting the patent term adjustment in this patent to 487 days.

On instant request for reconsideration, patentees timely requested reconsideration of the entry of the period of reduction, pursuant to 37 CFR 1.704(c)(10), of 64 days for the filing of a REQUEST FOR ACKNOWLEDGMENT OF PREVIOUSLY SUBMITTED INFORMATION DISCLOSURE STATEMENT filed October 28, 2005 (and resubmitted December 19, 2005). Patentees argue that the filing of this paper was not a failure to engage within the meaning of 37 CFR 1.704(c)(10) as patentees submitted the same IDS on two separate occasions earlier in the patent. However, in both instances and for no apparent reason, the IDS submitted was not reviewed or acknowledged by the examiner. In support thereof, patentees submitted *prima facie* evidence in the form of copies of date-stamped and itemized return receipt postcards showing that IDSSs were originally filed on January 28, 1997 and March 15, 2001.

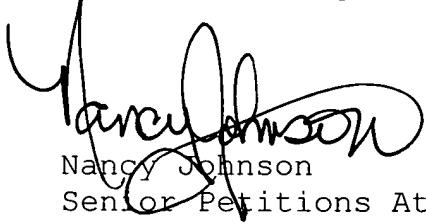
Patentees' arguments have been considered and found persuasive. A further review of the prosecution history, in light of the evidence on petition, reveals that entry of the period of reduction, pursuant to 37 CFR 1.704(c)(10), was not warranted. The fact that the IDSSs were originally filed (and refiled) under circumstances that did not constitute a failure to engage in reasonable efforts to engage, but not considered by the Office is persuasive. Under the circumstances, the further resubmission of the IDS on October 28, 2005 and on December 19, 2005 after the mailing of the notice of allowance did not constitute a failure to engage within the meaning of 37 CFR 1.704(c)(10). The period of reduction of 64 days is being removed.

In view thereof, the patent should have issued with a revised patent term adjustment of five hundred fifty-one (551) days.

No fee is required on request for reconsideration of a decision on patent term adjustment.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **FIVE HUNDRED FIFTY-ONE (551) days.**

Telephone inquiries specific to this letter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,084,260 B1

DATED : August 1, 2006

DRAFT

INVENTOR(S) : Lonberg et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 603 days

Delete the phrase "by 603 days" and insert -- by 551 days--